

Frequently Asked Questions: TAS Eligibility Process for the Safe Drinking Water Act Public Water System Supervision Program

This document provides answers to FAQs about the treatment in the same manner as a state (TAS) eligibility process for the Safe Drinking Water (SDWA) Public Water System Supervision (PWSS) program.

1. What is the Public Water System Supervision program?

Answer: The SDWA is designed to protect public health through maintaining and improving the quality of the nation's drinking waters. The 1974 law was amended in 1986 to address federally recognized Indian tribes (tribes or tribal) and further amended in 1996. The SDWA authorizes many actions to protect drinking water and its sources. Through the PWSS program, the U.S. Environmental Protection Agency implements and enforces drinking water standards to protect public health.

2. What water systems are regulated under the SDWA?

Answer: The SDWA regulates water systems that serve 25 or more persons or have at least 15 connections. Regulated systems can be either privately or publicly owned. The SDWA does not regulate private wells or systems that serve fewer than 25 individuals.

3. What is TAS?

Answer: The SDWA authorizes EPA to treat eligible Indian tribes in the same manner as a state for the purpose of assuming primary enforcement responsibility for the PWSS program. A tribe must obtain TAS eligibility approval in order to assume such a role. TAS is sought in conjunction with primacy or a program development grant and is not a separate process.

4. What is Primacy?

Answer: Tribes may be approved for primary enforcement responsibility (or "primacy") to implement the national standards for the PWSS program at public water systems under their jurisdiction. For a tribe to obtain primacy, EPA must approve the tribe for TAS and determine that the tribe meets the requirements for primacy under Section 1413(a) of the SDWA, 42 U.S.C. § 300g-2(a), and 40 CFR part 142, subpart B. TAS is sought in conjunction with primacy and is not a separate process. The *Tribal Primacy: An Overview* brochure (EPA 816-K-02-007) provides more details about primacy requirements for the PWSS program. EPA regions retain primary enforcement authority for the PWSS program in the absence of an EPA-approved PWSS program in Indian country.

5. Can my tribe receive funding from EPA to develop a primacy program?

Answer: Yes. The SDWA authorizes financial assistance to states and to tribes with TAS approval for the PWSS program to develop primacy programs. As part of the process for obtaining a PWSS grant to develop a primacy program, a tribe must obtain approval for TAS for purposes of receiving a grant.

6. Is my tribe eligible for TAS for the PWSS Program?

Answer: There are four requirements for tribal TAS eligibility. A tribe must 1) be recognized by the Secretary of the Interior; 2) have a functional tribal government responsible for the health, safety, and welfare of the tribal community; 3) be able to demonstrate that the

Attachment I

regulatory functions to be performed in the public water systems are within the Indian tribal government's jurisdiction; and 4) be capable of administering an effective PWSS program consistent with the SDWA and all applicable regulations. 40 CFR 142.72

7. How can my tribe apply for TAS?

Answer: Your tribe applies for TAS as part of the process of applying for a grant or for primacy. To apply for TAS, your tribe must meet the TAS eligibility requirements at 40 CFR 142.72 by providing the following information identified in 40 CFR 142.76: 1) a statement that the tribe is recognized by the Secretary of the Interior; 2) information about the tribal government; 3) proof of tribal authority; and 4) a description of administrative capabilities. The EPA Administrator may request further documentation necessary to support a tribe's eligibility for TAS.

More detailed information about the TAS application process and application materials can be found in the *Treatment in the Same Manner as a State (TAS) for the Public Water System Supervision (PWSS) Program Fact Sheet* (EPA 816-F-07-006) and in Attachment H of this TAS review strategy.

8. What if my tribe has already met the requirements for TAS eligibility under the SDWA for the Underground Injection Control (UIC) Program, the Clean Water Act (CWA), or the Clean Air Act (CAA)?

Answer: If the EPA Administrator has previously determined that a tribe has met the requirements for TAS eligibility under the SDWA for the UIC Program, the CWA, or the CAA, then that tribe only needs to provide information unique to the PWSS program. More details can be found in the *Treatment in the Same Manner as a State (TAS) for the Public Water System Supervision (PWSS) Program Fact Sheet* (EPA 816-F-07-006) (see paragraphs 3, 4e, and 4f under *TAS Application Materials*).

9. Where should my tribe send the application materials?

Answer: You will want to work closely with the EPA regional office as you are preparing your application. The EPA regional office can answer questions and provide guidance while you prepare your application. When completed, applications should be sent to the EPA regional office that currently implements and enforces the SDWA for your tribe. To find information about which EPA region works with your tribe, visit <http://www.epa.gov/indian/map.htm>.

10. Where can I get more information about TAS?

Answer: The *Treatment in the Same Manner as a State (TAS) for the Public Water System Supervision (PWSS) Program Fact Sheet* (EPA 816-F-07-006) and Attachment H of this TAS review strategy provide detailed information about the TAS application process and application materials. EPA's American Indian Environmental Office also has information on TAS as well as other laws, regulations, and guidance related to Indian country on its Web site at <http://www.epa.gov/indian/>.